IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.62 OF 2004

Chinchwad Devsthan Trust,
a Public Trust, registered
according to the provision of Bombay
Public Trust Act, 1950, having
its Registered Office at Chinchwad,
Taluka Haveli, District:Pune,
represented by its present Trustees :
1. Shri Surendra Dharnidhar Deo,
2. Shri Dattatray Sakharam Kunjeer
3. Shri Bhalchandra Dinkar Deo
4. Shri Ashok Gajanan Purohit
5. Shri Pandurang Ramchandra Kale..Appellants
(Orig.Plaintiffs)

Versus

Pimpri Chinchwad Municipal
Corporation .. Respondent
(Orig.Defendant)

Adv. Ms. Nayna Thatte i/b. S.M. Oak for the Appellants
Adv. Mr. Deepak More for the Respondent

CORAM : S.R. SATHE,J.
DATED : 11/07/2007

ORAL JUDGEMENT :-

1. Heard learned Advocate for the Appellant.

2. The Appellant Chinchwad Devsthan Trust, original Plaintiff filed Regular Civil Suit No.3 of 2002 (old RCS No. 801/76) against Pimpri Chinchwad Municipal Corporation for possession of the land admeasuring 373.4 sq. meters of City Survey No.994, Survey No.1 situated at village Bhosari by alleging that the defendants have made an encroachment on the

suit land and constructed wall and shade for their school.

3. The said suit was opposed by the defendant Pimpri Chinchwad Municipal Corporation by filing Written Statement Exh-12. They contended that the land bearing Survey No.1 at Bhosari alongwith school building and open space adjacent to it was transferred to them from School Committee Zilha Parishad, Pune on 01/07/1973 and since then, they are in possession of the same. The defendant, therefore, contended that they have not made any encroachment and suit is liable to be dismissed.

4. On these pleadings, the learned Trial Judge framed issues. In order to prove the suit claim on behalf of Plaintiffs. One Mr. Gajanan examined himself at Exh-83 and produced certain documents. The defendant did not adduce any oral evidence.

5. After considering the evidence on record the Trial Court held that Plaintiff has failed to prove the alleged encroachment. Naturally, he dismissed the Plaintiff's suit.

6. The above finding of the Trial Court was challenged by the Plaintiff-Trust in Civil Appeal no.496 of 2002. However, the Appellate Court also held that the finding recorded by the learned Trial Court is correct and therefore, dismissed the appeal.

7. Being aggrieved by the order passed by the First Appellate Court the Plaintiff-Trust has filed the present Second Appeal.

8. In this appeal before me, the learned Advocate for the Appellant argued before me that both the Courts below have not taken into consideration the fact that CTS No.1 is standing in the name of Plaintiff and the courts below have wrongly held that there is nothing on record to show that the land admeasuring 1 acre was only sold to Grampanchayat. It was, therefore, submitted that appeal be allowed and decree for possession be passed in favour of Plaintiff.

9. The suit was for the possession of the encroached portion. Naturally, in such suit it was bounden duty of the Plaintiff to adduce cogent and convincing evidence to prove the alleged encroachment. The Plaintiff even did not adduce any documentary

evidence to show that land admeasuring only 1 acre was sold to Bhosari Grampanchayat which was finally converted into Corporation. It must be noted that there is nothing on record to indicate that the Plaintiff had given proper boundaries of the alleged encroached portion and had produced the sketch of the encroached portion alongwith plaint. Ofcourse, the Surveyor appointed by the Appellant had shown that there was encroachment. But the said Surveyor was not the Government Surveyor. In fact, that is why during the pendency of the suit DILR was appointed as Court Commissioner to find out whether there is any encroachment made by the defendant on Plaintiff's land. The DILR as per his report Exh-85 clearly showed that there was no encroachment as alleged on Plaintiff's land. The map drawn by the DILR also indicated that there was no encroachment. No evidence is adduced by the Plaintiff to show that the DILR's report is not true and correct. So, under the circumstances, both the Courts below rightly relied on the DILR's Report Exh-85 and correctly held that the Plaintiff has failed to prove the encroachment.

10. There is nothing on record to show that the said concurrent finding of the fact is perverse or the

same is given without taking into consideration any evidence on record. It is established that CTS Nos.994 and 995 out of Survey No.1 are standing in the name of defendant and the said land is belonging to defendant. There is mutation entry to this effect made on 31/11/1968. Admittedly, the said entry is not challenged by Plaintiff at any time. So, having regard to all these aspects, I have no hesitation to hold that both the Courts below have rightly dismissed the Plaintiff's suit.

11. The learned Advocate for the Plaintiff has failed to point out that any substantial question of law is involved in the present appeal.

Hence, appeal is dismissed in limine.

The Appellant-Plaintiff to pay costs of this appeal to the Respondent-Defendant.

(S.R. SATHE,J.)